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7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
9 AT SEATTLE

10 SUSAN CHEN, et al.,

11 Plaintiffs,

12 v.

13 NATALIE D'AMICO, et al.,

14 Defendants.

CASE NO. C16-1877JLR

ORDER TO SHOW CAUSE

15 Before the court is Defendants Kimberly Danner and Washington Department of
16 Social and Health Services' ("DSHS") (collectively, "Defendants") January 2, 2020,
17 filing captioned "State Defendants' Anticipated Scope of Trial." (*See* MFR (Dkt. # 253)
18 at 1.) At the pretrial conference on January 2, 2020, prior to Defendants' filing, counsel
19 for Defendants informed the court that they intended to file a motion for reconsideration
20 of the court's summary judgment order, contending that the court should have applied a
21 gross negligence standard of care to a portion of Plaintiffs Susan Chen, Naixiang Lian,
22 J.L., and L.L.'s (collectively, "Plaintiffs") negligent investigation claim. (*See* MSJ Order

1 (Dkt. # 242) at 47-52.) Defendants’ January 2, 2020, filing addresses the same issue.
2 (See MFR at 2-3.) Therefore, the court construes Defendants’ filing as a motion for
3 reconsideration of the court’s summary judgment order pursuant to Local Civil Rule 7(h).
4 See Local Civil Rules W.D. Wash. LCR 7(h); *see also* Fed. R. Civ. P. 1 (instructing that
5 the federal rules of civil procedure “should be construed, administered, and employed by
6 the court and the parties to secure the just, speedy, and inexpensive determination of
7 every action and proceeding”). In addition, the court sua sponte considers whether it
8 should grant summary judgment in favor of Defendants on Plaintiffs’ remaining claim for
9 negligent investigation. *See* Fed. R. Civ. P. 56(f).

10 In its summary judgment order, the court analyzed Plaintiffs’ negligent
11 investigation claim under the standard for negligent investigation claims that the parties
12 relied upon in their briefing. (See MSJ Order at 47-52 (citing *Tyner v. Dep’t of Soc. &*
13 *Health Servs.*, 1 P.3d 1148, 1155 (Wash. Ct. App. 2000) (applying “the duty to use
14 reasonable care in investigating allegations of child abuse”); *McCarthy v. Cty. of Clark*,
15 376 P.3d 1127, 1134 (Wash. Ct. App. 2016) (“A negligent investigation claim is
16 available only when law enforcement or DSHS conducts an incomplete or biased
17 investigation that resulted in a harmful placement decision.”) (internal quotations
18 omitted); *see also* Defs’ MSJ (Dkt. # 189) at 11-12 (“The issue is not whether DSHS was
19 simply negligent in its investigation, generally, but whether 1) DSHS performed an
20 *incomplete* or *biased* investigation, and 2) whether that investigation resulted in a harmful
21 placement decision.”); Chen MSJ Resp. (Dkt. # 204) at 15 (“A negligent investigation
22 claim involves two elements: (1) that DSHS breached its duty of care by failing to

1 conduct an adequate investigation; and (2) that the investigation’s inadequacy
2 proximately caused a harmful placement decision.”.) The court concluded that Plaintiffs
3 met their burden to show a genuine dispute of material fact as to whether Ms. Danner or
4 DSHS may be liable for negligent investigation based on their investigation “prior to
5 [the] October 30, 2013 shelter care order.” (MSJ Order at 50.)

6 Defendants now contend that the portion of Ms. Danner’s and DSHS’s
7 investigation prior to the October 30, 2013, shelter care order was an “emergent
8 placement” investigation that the court should analyze under a gross negligence standard.
9 (See MFR at 23.) Defendants rely on RCW 4.24.595(1), which states:

10 Governmental entities, and their officers, agents, employees, and volunteers,
11 are not liable in tort for any of their acts or omissions in emergent placement
12 investigations of child abuse or neglect under chapter 26.44 RCW including,
13 but not limited to, any determination to leave a child with a parent, custodian,
14 or guardian, or to return a child to a parent, custodian, or guardian, unless the
15 act or omission constitutes gross negligence. Emergent placement
16 investigations are those conducted prior to a shelter care hearing under RCW
17 13.34.065.

18 RCW 4.24.595(1)¹; (see also MFR at 3 (“Therefore, absent gross negligence,
19 [DSHS] is immune from liability for its actions related to” emergent placement
20 investigations (quoting *Peterson v. State*, 9 Wash. App. 2d 1079, 2019 WL
21 3430537, at *6 (Wash. Ct. App., July 30, 2019) (unpublished)).)

22 The plain language of RCW 4.24.595(1) supports Defendants’ argument, and the
court will consider granting summary judgment in favor of Defendants on the above

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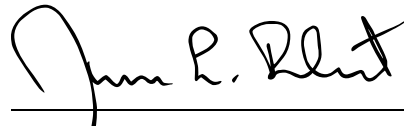
¹ RCW 4.24.595(1) became effective on June 17, 2012, prior to the events at issue in this case. See Engrossed Substitute S.B. 6555, 62nd Leg., Reg. Sess. (Wash. 1998).

1 grounds. Therefore, the court ORDERS Plaintiffs to file a response to Defendants'
2 motion for reconsideration that addresses the following two issues:

- 3 1) Whether gross negligence is the correct standard to apply to the remainder of
4 Plaintiffs' negligent investigation claim; and
- 5 2) Assuming gross negligence is the correct standard, whether the evidence
6 currently in the record or submitted in response to this order is sufficient to
7 survive summary judgment in favor of Defendants on Plaintiffs' negligent
8 investigation claim. *See* Fed. R. Civ. P. 56.

9 Plaintiffs' response shall be limited to **ten (10)** pages and must be filed by **Wednesday,**
10 **January 8, 2020, at 12:00 p.m.** Seattle time. Defendants may file a reply, limited to **five**
11 **(5)** pages, by **Thursday, January 9, 2020.** The court further DIRECTS the clerk to note
12 Defendants' motion for reconsideration (Dkt. # 253) for Thursday, January 9, 2020.

13 Dated this 3rd day of January, 2020.

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16 JAMES L. ROBART
17 United States District Judge
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